

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 691**

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**Introduced by Assembly Member Muratsuchi**

February 21, 2013

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An act to add Section 6311.5 to the Public Resources Code, relating to state lands.

### LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Muratsuchi. State lands: granted trust lands: sea level rise.

Existing law vests with the State Lands Commission control over specified state lands, including tidelands and submerged lands. Existing law grants to various local entities the right, title, and interest of the state in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

This bill would provide that addressing the impacts from sea level rise for all of its legislatively granted public trust lands shall be among the management priorities of a local trustee, as defined. The bill would require a local trustee whose gross public trust revenues ~~exceed~~ *average over \$250,000 annually between January 1, 2009, and January 1, 2014*, to prepare and submit to the commission, no later than July 1, 2019, except as provided, an assessment of how it proposes to address sea level rise. The bill would permit, but not require, a local trustee whose gross public trust revenues are \$250,000 or less to prepare and submit to the commission an assessment. The bill would require a local trustee

to consider and use relevant information from specified reports on sea level rise in preparing the assessment *and would permit a trustee that has already completed an assessment on the impacts of sea level rise to submit that assessment to the commission*. The bill would require that the commission make those assessments available to the public on its Internet Web-Site ~~site~~, and send electronic copies to certain other public entities.

By adding to the duties of local agencies that are local trustees of granted public trust lands, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Upon admission to the United States, and as incident of its
- 4 sovereignty, the State of California received title to the tidelands,
- 5 submerged lands, and beds of navigable waterways within its
- 6 borders to be held subject to the public trust doctrine for statewide
- 7 public purposes, including commerce, navigation, fisheries,
- 8 preservation of lands in their natural state, open space, wildlife
- 9 habitat, water-oriented recreation, and other recognized public
- 10 trust uses.
- 11 (b) The state has made grants of public trust lands to over 80
- 12 local public entities, each of which manages the state's public trust
- 13 lands as trustee pursuant to the common law public trust doctrine,
- 14 statutory grants, the California Constitution, and other laws
- 15 governing the trust and the trustee's fiduciary responsibilities.
- 16 (c) A local trustee of granted public trust lands is charged with
- 17 managing the state's granted public trust lands on behalf of the
- 18 state for the benefit of all the people of California.
- 19 (d) As part of its fiduciary duty, a local trustee of granted public
- 20 trust lands is required to take reasonable steps under the

1 circumstances to take and keep control of and preserve the trust  
2 property.

3 (e) The effects of climate change and sea level rise will have  
4 enormous implications for the state's economic and social future,  
5 and have the potential to have a wide range of impacts to critical  
6 infrastructure, such as schools, roads, hospitals, emergency  
7 facilities, wastewater treatment plants, airports, ports, and energy  
8 facilities.

9 (f) Coastal counties in California are home to approximately ~~32~~  
10 ~~million~~ 32,000,000 people.

11 (g) The coastal economy contributes more than \$50 billion  
12 annually to the State of California.

13 (h) Port activities in California generate an estimated \$7 billion  
14 in state and local tax revenues annually and employ more than  
15 ~~one-half million~~ 500,000 people in California. Nationwide more  
16 than two million jobs are connected to California ports.

17 (i) In 2007, more than 40 percent of the total containerized cargo  
18 entering the United States arrived at California ports, and almost  
19 30 percent of the nation's exports left from California ports.

20 (j) In 2002, cargo operations shutdown at west coast ports for  
21 10 days, and the estimated loss to the national economy was \$1  
22 billion per day.

23 (k) Research funded by the state has shown that a 55-inch sea  
24 level rise, with a 100-year storm event along the California coast,  
25 places approximately 480,000 people (based on the population in  
26 2009) and nearly \$100 billion of property at risk.

27 (l) Coastal habitats, including wetlands and beaches, provide  
28 important ecological, recreational, and scenic functions and values,  
29 which are threatened by sea level rise, unless actions are taken to  
30 effectively manage these habitats and adjacent lands.

31 (m) Many state entities, such as the Governor's Office of  
32 Planning and Research, the Strategic Growth Council, the Ocean  
33 Protection Council, the San Francisco Bay Conservation and  
34 Development Commission, the California Coastal Commission,  
35 and the State Lands Commission have supported efforts to develop  
36 tools and to increase accessibility to existing state data, and to  
37 provide additional data and tools to help local, regional, and state  
38 agencies make informed decisions about sea level rise.

39 (n) The use of revenues received from trust lands and trust assets  
40 by a local trustee of granted public trust lands is limited by the

1 statutory grant, the public trust doctrine, and other laws governing  
2 the trust. An evaluation of the impacts of sea level rise on granted  
3 public trust lands is directly related to the operation and  
4 management of these resources managed on behalf of the state by  
5 local trustees and is, therefore, a purpose consistent with the public  
6 trust for commerce, navigation, and fisheries, and the applicable  
7 statutory grants.

8 (o) Because a local trustee of granted public trust lands holds  
9 and manages its public trust property, including the lands and  
10 revenue derived from that property, as a state asset for the benefit  
11 of the people of California and cannot use the trust corpus for  
12 general municipal purposes or other purposes not consistent with  
13 the public trust doctrine and its statutory grant, and because the  
14 State Lands Commission is provided with a mechanism in this act  
15 to exempt a local trustee that does not have sufficient state funds,  
16 either through the trust or other existing funding mechanisms, to  
17 pay for the cost of assessing the impacts of sea level rise, Section  
18 6311.5 of the Public Resources Code, as added by this act, will  
19 not impose costs on local governments.

20 SEC. 2. Section 6311.5 is added to the Public Resources Code,  
21 to read:

22 6311.5. (a) For the purposes of this section, the following  
23 terms shall have the following meanings:

24 (1) "Local trustee" means a local trustee of granted public trust  
25 lands that is a county, city, or district, including water, sanitary,  
26 regional park, port, or harbor district, or any other local political  
27 or corporate subdivision that has been granted public trust lands  
28 through a legislative grant.

29 (2) "Gross public trust revenues" means those gross revenues  
30 that are subject to subdivision ~~(b)~~ (c) of Section 6306.

31 (b) Addressing the impacts from sea level rise for all of its  
32 legislatively granted public trust lands pursuant to this section shall  
33 be among the management priorities of a local trustee. The  
34 geographic scope of a local trustee's assessment of the impacts  
35 from sea level rise is not required to go beyond the boundaries of  
36 the local trustee's granted public trust lands.

37 (c) A local trustee, whose gross public trust revenues ~~exceed~~  
38 *average over* two hundred fifty thousand dollars (\$250,000)  
39 *annually between January 1, 2009, until January 1, 2014*, shall  
40 prepare and submit to the commission, no later than July 1, 2019,

1 an assessment of how the local trustee proposes to address sea  
2 level rise. A local trustee whose gross public trust revenues are  
3 two hundred fifty thousand dollars (\$250,000) or less may, but is  
4 not required to, prepare and submit to the commission an  
5 assessment.

6 (d) For the purposes of subdivision (c), a local trustee shall  
7 consider and use relevant information from the 2009 California  
8 Climate Adaptation Strategy prepared by the Natural Resources  
9 Agency, the Report on Sea Level Rise Preparedness prepared by  
10 the State Lands Commission, the Sea-Level Rise for the Coasts of  
11 California, Oregon, and Washington: Past, Present, and Future, a  
12 report prepared by the National Academy of Sciences, the  
13 Resolution of the California Ocean Protection Council on  
14 Sea-Level Rise, ~~and~~ the State of California Sea-Level Rise Interim  
15 Guidance Document, *and* any subsequent updates to those reports  
16 that become available six months prior to the date the assessment  
17 is required to be submitted to the commission. A local trustee's  
18 assessment prepared pursuant to subdivision (c) shall include all  
19 of the following:

20 (1) An assessment of the impact of a range of sea level rise on  
21 granted public trust lands, as described in the Resolution of the  
22 California Ocean Protection Council on Sea-level Rise and the  
23 latest version of the State of California Sea-Level Rise Interim  
24 Guidance Document.

25 (2) Maps showing the areas that may be affected by sea level  
26 rise in the years 2030, 2050, and 2100. These maps shall include  
27 the potential impacts of 100-year storm events. A local trustee may  
28 rely on appropriate maps generated by other entities.

29 (3) An estimate of the financial cost of the impact of sea level  
30 rise on granted public trust lands. The estimate shall consider, but  
31 is not limited to, the potential cost of repair of damage to and the  
32 value of lost use of improvements and land, and the anticipated  
33 cost to prevent or mitigate potential damage.

34 (4) A description of how the local trustee proposes to protect  
35 and preserve natural and manmade resources and facilities located,  
36 or proposed to be located, on trust lands and operated in connection  
37 with the use of the trust lands.

38 (e) In addressing the impacts from sea level rise, a local trustee  
39 shall collaborate with its lessees, appropriate local, state, and  
40 federal agencies, and other users of the granted public trust lands.

(f) (1) A local trustee that prepares an assessment pursuant to subdivision (c) shall submit a copy to the commission in hard copy and electronic form. The commission shall make the assessment available to the public on its Internet Web Site and, for informational purposes, shall send an electronic copy to each member of the Climate Action Team, the climate change program manager in the office of the Secretary for Environmental Protection, and the Governor's Office of Planning and Research.

(2) *For purposes of compliance with this subdivision, if a trustee has already completed an assessment of the impacts of sea level rise that meets the criteria of this section, the trustee may submit that assessment to the commission.*

(g) The commission shall exempt a local trustee of granted public trust lands from this section if the commission finds either of the following:

(1) The local trustee's public trust lands are not subject to sea level rise by 2100, based upon the highest projections in the most recent version of the State of California Sea-Level Rise Guidance Document.

(2) The cost to provide an assessment of how the local trustee proposes to address the impacts of sea level rise substantially outweighs the benefit the action would have in preventing the potential economic and environmental harms associated with sea level rise on the local trustee's granted public trust lands.

(h) The commission shall exempt a local trustee from this section if the revenues derived from its granted public trust lands and assets subject to subdivision ~~(b)~~ (c) of Section 6306 or funding made available to it from other *discretionary* sources is not sufficient to pay for the cost of assessing the impacts of sea level rise on granted public trust land and providing this information to the commission.

(i) The commission shall consider a local trustee's request for an exemption pursuant to subdivision (g) or (h) at a properly noticed commission meeting if the request is made before November 1, 2018.

(j) Other than submission of the assessment required by subdivision (c), this section does not require a local trustee to implement any specific actions to address sea level rise pursuant to this section.

1 (k) Nothing in this section shall be construed to conflict with  
2 any federal regulations governing sea level rise.  
3 SEC. 3. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the costs incurred by a local agency to pay for the program of level  
6 of service mandated by this act, within the meaning of Section  
7 17556 of the Government Code, will be paid solely from the  
8 revenues derived from the public trust lands and assets that are  
9 granted to that local agency by the state.

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